

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015020701

ORDER GRANTING MOTION FOR
STAY PUT

Student filed a motion for stay put on March 2, 2015. Student requested stay put on only one provision of her individualized education program dated March 20, 2014. This provision states that Student may walk in the graduation ceremonies of Wilson High School, although Student is not presently nor has ever been enrolled there.

Long Beach Unified School District has not filed a specific response to Student's motion. However, in both its response to Student's request for due process and its prior written notice, Long Beach indicates its agreement that Student will be permitted to participate in the graduation ceremony at Wilson High School.¹

APPLICABLE LAW AND DISCUSSION

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Student's last consented to and implemented IEP states that Student would be permitted to walk in the graduation ceremonies at Wilson High School. Additionally,

¹ In its response to Student's request for due process, Long Beach states that it has taken corrective action to assure Student may participate in "Grad Night" activities at Wilson High School. Grad Night activities are not specifically referenced in Student's IEP.

Long Beach has indicated in two pleadings filed with OAH that it has agreed to comply with that provision of Student's IEP.

Student is entitled to remain in her last agreed upon and implemented placement while a dispute is pending. Generally, a motion for stay put is not required unless a dispute over placement exists. Here, although Long Beach has filed pleadings that indicate it will permit Student to participate in the Wilson High School graduation, it has not filed a notice of non-opposition to Student's motion with a declaration in support stating that it will comply with Student's IEP. Additionally, Student has pleaded facts indicating that Long Beach has previously withdrawn its agreement to let Student participate in the Wilson High School graduation. Therefore, Student has demonstrated that a dispute exists regarding her graduation participation. For these reasons, in this case an Order granting Student's motion for stay put is appropriate.

ORDER

Student's motion for stay put is granted as to the provision in Student's IEP that she be allowed to walk in Wilson High School's graduation ceremony.

DATE: March 11, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings